RB-2007-01 Guidance on New Mortgage Fraud Notice (Rescinded - March, 2008)

Rescinded with the Commission's Adoption of 7 TAC Section 91.704 Effective March 2, 2008

## **BACKGROUND**

House Bill 716, passed by the 80<sup>th</sup> Legislature, amends Chapter 343 of the Finance Code and is intended to require all residential mortgage lenders to provide a new written notice at the time the mortgage loan is closed. The amendment prescribes the language and format of the notice, which warns borrowers of the penalties for making false or misleading statements to obtain a residential mortgage loan. The new law affects lenders making mortgage loans which are made to one or more individuals for personal, family, or household use. These loans are secured by a manufactured home or real property improved by a dwelling designed for occupancy by four or fewer families and are used, or to be used, as the borrower's principal residence. Although the Department believes the Legislature clearly intended to cover all such lenders, questions have recently been raised concerning applicability of the requirement to state-chartered credit unions. This Guidance is being issued to strongly recommend compliance with the new S 343.105, which is effective September 1, 2007.

## **GUIDANCE**

Mortgage fraud is of increasing concern to the financial services industry and to the overall economy. In addition to requiring the notice, the bill enhances criminal penalties for mortgage fraud. Notifying borrowers before they close on a loan of the elements and penalties for mortgage fraud serves to both educate and warn the borrowers of the seriousness of the offense.

Given that the ultimate goal is to reduce mortgage fraud and the losses that result from it, and given the background and purpose of the legislation, credit unions are strongly urged to voluntarily comply with the notice requirements set out in HB 716. While the Department does not currently plan to write up credit unions for failing to provide the notice, the examiners will be asking for and documenting whether the notice required under S 343.105 is being provided to credit union members.

RB 2007-01

# **Guidance on Mortgage Fraud Notice**

#### POTENTIAL COMMISSION RULE

In view of the public policy considerations and the potential educational benefits for members, the Credit Union Commission will be considering the need and appropriateness of promulgating a rule that will clarify that residential mortgage loans written under the Credit Union Act must have this new notice. As with any proposed rule, if the Commission decides to impose such a requirement, notice of the proposed rulemaking will be published and comments from credit unions will be solicited.

### NOTICE REQUIREMENTS OF S343.105 (HB 716)

The notice must:

- be provided on a separate document;
- (2) be in at least 14-point type; and
- (3) have the following or substantially similar language:

"Warning: Intentionally or knowingly making a materially false or misleading written statement to obtain property or credit, including a mortgage loan, is a violation of Section 32.32, Texas Penal Code, and, depending on the amount of the loan or value of the property, is punishable by imprisonment for a term of 2 years to 99 years and a fine not to exceed \$10,000.

"I/we, the undersigned home loan applicant(s), represent that I/we have received, read, and understand this notice of penalties for making a materially false or misleading written statement to obtain a home loan.

"I/we represent that all statements and representations contained in my/our written home loan application, including statements or representations regarding my/our identity, employment, annual income, and intent to occupy the residential real property secured by the home loan, are true and correct as of the date of loan closing."

In addition, on receipt of the notice, the member shall verify the information and execute the notice.

## **CONCLUSION**

The Department believes it is in the best interest of credit unions and their members for this notice to be given in a manner similar to that required of all other residential mortgage lenders in Texas. The Department, therefore, encourages all credit unions making residential mortgage loans to provide this notice to every applicant for a home loan.